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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board ("Board") held a General meeting on March 15, 2017, in Hearing Room #1, at the Board's offices.

2. **ROLL CALL**

Ramon Alvarez C., President and Dealer Member, called the meeting of the Board to order at 2:30 p.m.

Present:	Ramon Alvarez C. Anthony A. Batarse Jr. Kathryn Ellen Doi David C. Lizárraga Victoria Rusnak Glenn E. Stevens	William G. Brennan, Executive Director Danielle R. Vare, Staff Counsel
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Absent: Ryan L. Brooks  
Rahim Hassanally  
Bismarck Obando

3. **PLEDGE OF ALLEGIANCE**

Mr. Brennan led the members and staff in the Pledge of Allegiance.

4. **CLOSED EXECUTIVE SESSION**

Ms. Doi noted that Danielle Vare is precluded from participating in this matter because she represented Mega RV during the hearing before the Board.

Pursuant to Government Code section 11126(e)(1), the Public and Dealer Members of the Board shall convene in a closed Executive Session.

Discussion and advice from legal counsel concerning pending litigation.

ROADTREK MOTORHOMES, INC., a Canadian corporation v. NEW MOTOR VEHICLE BOARD, STATE OF CALIFORNIA; MEGA RV CORP., a California corporation doing business as MCMAHON'S RV (Real Party in Interest)

Orange County Superior Court - Central Justice Center

Case No. 30-2013-00624042-CU-PT-CJC

Protest Nos. PR-2199-10 and PR-2201-10

Discussion and advice from the Board's legal counsel concerning pending litigation, by the Public and Dealer Members of the Board.

The Public and Dealer Members of the Board convened in closed Executive Session. An attorney-client work product privilege memorandum from Robin Parker, Senior Staff Counsel, was provided to the members to justify the closed Executive Session. The members participated in a discussion of this matter with Kenneth C. Jones, Supervising Deputy Attorney General. No action was taken.

5. **OPEN SESSION**

Mr. Alvarez announced that no action was taken during the closed Executive Session.

6. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

Given this matter involves a dispute between a franchisee and a franchisor, Mr. Alvarez C. turned the meeting over to Kathryn Doi, Public Member and Vice President.

Ms. Doi reminded the Dealer Members that they may not participate in, hear comments, advise other members upon or decide Agenda Items 6 and 7.

Ms. Doi read the following statement "comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board." Furthermore, she indicated that since this is an adjudicative matter as described in Government Code section 11125.7(e), therefore members of the public may not comment on such matters.

a. **DEPENDABLE DODGE, INC. v. FIAT CHRYSLER AUTOMOBILES, INC.**  
Protest Nos. PR-2435-15 and PR-2436-15

Oral comments were presented before the Public Members of the Board. Gavin M. Hughes, Esq. and Robert A. Mayville, Esq. of the Law Offices of Gavin M. Hughes represented Protestant. Phil Schlein of the Law Offices of Gavin M. Hughes, and Ed and John Sternfeld were also present. Mark T. Clouatre, Esq. of Nelson Mullins Riley & Scarborough LLP and John P. Streelman, Esq. and Blake Gansborg, Esq. of Wheeler Trigg O'Donnell LLP represented Respondent. Gordy Nevers, Dealer Network

Development Manager in the Irvine Business Center, for FCA was also present.

- b. MATHEW ENTERPRISE, INC., dba STEVENS CREEK CHRYSLER JEEP DODGE AND RAM v. FCA US, LLC  
Protest Nos. PR-2484-16, PR-2485-16, PR-2486-16 and PR-2487-16

Oral comments were presented before the Public Members of the Board. Halbert B. Rasmussen, Esq. of Arent Fox LLP represented Protestant. Mark T. Clouatre, Esq. of Nelson Mullins Riley & Scarborough LLP represented Respondent. Gordy Nevers, Network Development Manager, California Business Center, for FCA was also present.

## 7. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

Ms. Doi noted that Ms. Vare will not participate in Agenda Item 7.b. (*Mathew Enterprise, Inc. dba Stevens Creek Chrysler Jeep Dodge and Ram v. FCA US, LLC*) but she will be present for the closed Executive Session deliberations in Agenda Item 7.a (*Dependable Dodge, Inc. v. Fiat Chrysler Automobiles, Inc.*)

### a. **CONSIDERATION OF PROPOSED DECISION**

DEPENDABLE DODGE, INC. v. FIAT CHRYSLER AUTOMOBILES, INC.  
Protest Nos. PR-2435-15 and PR-2436-15

Consideration of the Administrative Law Judge's Proposed Decision, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Lizárraga seconded the motion. The motion carried unanimously.

### b. **CONSIDERATION OF PROPOSED ORDER**

MATHEW ENTERPRISE, INC., dba STEVENS CREEK CHRYSLER JEEP DODGE AND RAM v. FCA US, LLC

Protest Nos. PR-2484-16, PR-2485-16, PR-2486-16 and PR-2487-16

Consideration of the Administrative Law Judge's Proposed Order Granting Respondent's Motion to Dismiss Protests, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Mr. Stevens moved to adopt the Administrative Law Judge's Proposed Decision. Mr. Lizárraga seconded the motion. The motion carried with a 2-1 vote. Ms. Doi issued a concurring opinion, agreeing with the result but for different reasoning.

8. **OPEN SESSION**

At Mr. Clouatre's request, Ms. Vare explained that her preclusion from participating in *Dependable Dodge* was because of her previous employment with the law firm that filed the protest (Law Offices of Michael J. Flanagan). Since Mr. Hughes substituted in as counsel for Protestant, the preclusion was moot so Ms. Vare participated in this matter.

The Public Members returned to Open Session. Ms. Doi announced the decisions in Agenda Items 7.a. and 7.b.

Mr. Alvarez C. presided over the remainder of the meeting.

9. **CONSIDERATION OF THE WRIT OF MANDATE IN ROADTREK MOTORHOMES, INC., A CANADIAN CORPORATION V. NEW MOTOR VEHICLE BOARD, STATE OF CALIFORNIA; MEGA RV CORP., A CALIFORNIA CORPORATION DOING BUSINESS AS MCMAHON'S RV (REAL PARTY IN INTEREST), ORANGE COUNTY SUPERIOR COURT - CENTRAL JUSTICE CENTER, CASE NO. 30-2013-00624042-CU-PT-CJC**

Agenda Items 9.a. and 9.b. involve recreational vehicles so both the Public Members and Dealer Members will participate.

Mr. Alvarez C. invited Supervising Deputy Attorney General KC Jones to provide the Board with his recommendation. Mr. Jones stated it is appropriate for the Board to comply with the terms of the Writ of Mandate issued by the Orange County Superior Court and to set aside and vacate its decisions on both protests, Protest nos. PR-2199-10 and PR-2201-10; and refer the matters to the Administrative Law Judge to proceed with the matters pursuant to the terms of the Court of Appeal decision. Furthermore, Mr. Jones recommended that the requests for dismissal filed by Protestant should be referred to the Administrative Law Judge.

- a. **MEGA RV CORP. dba MCMAHONS RV v. ROADTREK MOTORHOMES, INC.**  
Protest No. PR-2199-10  
Veh. Code § 3070 Modification (Colton)

Consideration of the Orange County Superior Court's Writ of Mandate wherein the Court ordered the Board to set aside its October 17, 2012 Decision in Protest No. PR-2199-10, and directed the Board to rehear Protest No. PR-2199-10 and proceed in the manner required by law in determining whether there has been a modification of Mega RV's franchise, by the Public and Dealer Members of the Board.

- b. MEGA RV CORP. dba MCMAHONS RV v. ROADTREK MOTORHOMES, INC.  
Protest No. PR-2201-10  
Veh. Code § 3070 Modification (Irvine)

Consideration of the Orange County Superior Court's Writ of Mandate wherein the Court ordered the Board to set aside its October 17, 2012 Decision in Protest No. PR-2201-10, and directed the Board to rehear Protest No. PR-2201-10 and proceed in the manner required by law in determining whether there has been a modification of Mega RV's franchise, by the Public and Dealer Members of the Board.

Mr. Alvarez C. read the following statement:

*Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc.*, Protest No. PR-2199-10 and *Mega RV Corp. dba McMahan's RV v. Roadtrek Motorhomes, Inc.*, PR-2201-10 are not consolidated but will be discussed together because most of the background and procedural information is identical.

Between January and July of 2010, Mega RV filed 18 protests with the Board alleging violations of the Vehicle Code by Respondent Roadtrek involving Mega RV's dealership locations in Irvine, Colton, Scotts Valley and Palm Desert. By the first day of the hearing in August 2011, 12 protests had been consolidated for hearing, and six protests had been dismissed.

In PR-2199-10, Mega RV alleged that Roadtrek violated Section 3070(b) by failing to give the required notices of Roadtrek's intent to modify Mega RV's Colton franchise by establishing another franchisee, Mike Thompson's Recreational Vehicles, dba Mike Thompson's RV Superstores, MTRV, in the exclusive sales area Roadtrek had previously assigned to Mega RV (i.e., within a 60-mile radius of the dealership). Mike Thompson RV's Colton dealership was directly across the street from Mega RV's dealership; they were the only tenants in the Colton RV Expo.

In PR-2201-10, Mega RV alleged that Roadtrek violated Section 3070(b) by failing to give the required notices of Roadtrek's intent to modify Mega RV's Irvine franchise by establishing additional Roadtrek franchisees within Mega RV's contractually assigned exclusive territories. Roadtrek established Mike Thompson's RV Superstores dealership locations in Santa Fe Springs, Fountain Valley (two locations), and Colton, in the exclusive sales area

Roadtrek had previously assigned to Mega RV.

Roadtrek contended that there was no modification since Mega RV no longer has a franchise right to the exclusive territories, as Mega RV was no longer in good standing under the Dealer Agreement. Therefore, Roadtrek was under no obligation to give notice to Mega RV of its establishment of additional Roadtrek franchises.

In separate Proposed Decisions, Administrative Law Judge Woodward Hagle overruled the modification protests. The Proposed Decisions were rejected by the Board at its Special Meeting of August 23, 2012. Pursuant to Government Code section 11517(c)(2)(E), the Board, acting by and through its Public Members and Dealer Members, rejected each Proposed Decision and instead ordered that the protests be sustained and that Roadtrek violated Vehicle Code section 3070(b)(1).

At the October 17, 2012, Special Meeting, the Board adopted an Order Confirming Decision to Sustain Protest for PR-2199-10 and PR-2201-10, which had the effect of sustaining the protest and precluded the modification of Mega RV's franchise.

On October 30, 2012, Roadtrek filed a petition in the Sacramento County Superior Court seeking a Writ of Administrative Mandate. The writ was consolidated with five other writs and transferred to Orange County Superior Court. The trial court sustained the modification protests and denied Roadtrek's writ.

Roadtrek filed an Appeal in the Fourth Appellate District Court. The Appellate Court issued an Opinion on July 14, 2016, concluding that it was error to sustain Mega RV's two modification protests. The judgment was reversed as to the rulings on the modification protests and the case was remanded to the superior court with directions to enter a judgment setting aside the Board's decisions on these protests and direct the Board to rehear them. The Writ of Mandate issued on February 6, 2017.

In this Agenda Item, the Public and Dealer Members will consider setting aside the Board's Decisions in PR-2199-10 and PR-2201-10, both dated October 17, 2012.

Ms. Doi stated that she expressed concern the ALJ was taking action on the matter before the Board acted to comply with the Writ of Mandate. Ms. Doi requested the ALJ consider the motion to dismiss (requests for dismissal) before considering the matter on the merits.

Ms. Doi moved to comply with the Superior Court's Writ of Mandate and remand the matter to the ALJ for further consideration. Mr. Stevens seconded the motion. The motion carried unanimously.

Ms. Doi moved to amend her motion that the Board follow the directions of the Orange County Superior Court's Writ of Mandate and comply with the direction of the Orange County Superior Court. Mr. Stevens seconded the motion. The motion carried unanimously.

Ms. Doi subsequently amended her motion that in accordance with the Orange County Superior Court's Writ of Mandate, the Board will set aside and vacate the Board's Decision dated October 17, 2012. The Board will rehear Protest No. PR-2201-10 and proceed in the manner required by law in determining whether there's been a modification of Mega RV's franchise. Mr. Stevens seconded the motion. The motion carried unanimously.

In accordance with the Orange County Superior Court's Writ of Mandate, Ms. Doi moved that the Board will set aside and vacate the Board's Decision dated October 17, 2012. The Board will rehear Protest No. PR-2199-10 and proceed in the manner required by law in determining whether there's been a modification of Mega RV's franchise. Ms. Rusnak seconded the motion. The motion carried unanimously.

10. **ANNUAL REVIEW OF THE BOARD'S MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

This matter was postponed until after Agenda Item 12.

11. **ANNUAL UPDATE ON TRAINING PROGRAMS ATTENDED BY STAFF - ADMINISTRATION COMMITTEE**

This matter was postponed until after Agenda Item 12.

12. **BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE ADMINISTRATIVE PROCEDURE ACT, BAGLEY-KEENE OPEN MEETING ACT, POLITICAL REFORM ACT, AND PUBLIC RECORDS ACT - BOARD DEVELOPMENT COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Robin Parker, and Danielle Vare along with summaries of the Administrative Procedure Act, Bagley-Keene Open Meeting Act, Political Reform Act, and Public Records Act. A number of resource materials were also provided. With regards to the Public Records Act, Ms. Vare mentioned a California Supreme Court decision held that communications made on private e-mails or cell phones may be subject to disclosure under the Public Records Act.

Ms. Rusnak, Mr. Stevens and Mr. Lizárraga left the meeting, therefore the Board lost its quorum to transact any business.

10. **ANNUAL REVIEW OF THE BOARD'S MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

The members were provided with the Board's current Mission and Vision Statements. This

was for information only and no Board action was taken since the Board did not have a quorum.

11. **ANNUAL UPDATE ON TRAINING PROGRAMS ATTENDED BY STAFF - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Dawn Kindel concerning training programs attended by the staff since the last report. Miss Kindel indicated that she tries to keep costs down while making sure staff are fully trained by using DMV training facilities and state training facilities whenever possible. This was for information only and no Board action was taken since the Board did not have a quorum.

13. **BOARD FINANCIAL CONDITION REPORT FOR THE 2<sup>ND</sup> QUARTER OF FISCAL YEAR 2016-2017 - FISCAL COMMITTEE**

The members were provided with a memorandum from Bill Brennan, Dawn Kindel and Suzanne Luke concerning the Board's financial condition for the 2nd quarter of fiscal year 2016-2017. Ms. Luke indicated that the Board expended 46% of its \$1.5 million appropriated budget through the second quarter of fiscal year 2016-2017. The current reserve balance is \$2.3 million. Mr. Brennan reported that dealer fees are 50% less compared to November and December of 2015-2016. Ms. Doi requested that Mr. Brennan update the Board at the next meeting and inform them if the decrease in dealer fees is something to be concerned about. This was for information only and no Board action was taken since the Board did not have a quorum.

14. **DISCUSSION AND CONSIDERATION OF THE UPCOMING INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

The members were provided with a memorandum from Bill Brennan and Danielle Vare concerning the May 4, 2017, Industry Roundtable. Ms. Vare indicated that the Roundtable is coming together nicely, several speakers are confirmed, and the agenda is being finalized. As indicated in the memo, the potential topics are:

- "Joint employment" claims of dealership employees
- Case management statistics
- Manufacturer Performance Standards and the recent *Beck Chevrolet v. General Motors* case
- NMVB Case of First Impression: Manufacturer Export or Sale-for-Resale Policies
- Electric/Alternative Fuel Vehicles
- Autonomous Vehicles and their Regulation
- Update on the California Road Charge Pilot Program
- Incentive Programs and how dealers can achieve objectives as well as how manufacturer use them as leverage

This was for information only and no Board action was taken since the Board did not have a quorum.



15. **CONSIDERATION OF THE 2017 EDITION OF THE NEW MOTOR VEHICLE BOARD ADMINISTRATIVE LAW JUDGES' BENCHBOOK - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum and revised *Administrative Law Judges' Benchbook* from Bill Brennan and Robin Parker. Ms. Vare indicated that the new ALJs will be provided with the Benchbook and training once hired. Mr. Brennan indicated there was substantial review done by staff in regard to changes and modifications. Ms. Doi asked when the new judges will be hired and Miss Kindel indicated that DMV is currently processing their paperwork, which should take a couple months.

Ms. Doi moved to adopt the *Administrative Law Judges' Benchbook* as modified for 2017. Mr. Batarse seconded the motion. The motion carried unanimously. However, since the Board did not have a quorum this matter will be agendized for consideration at the June 27, 2017, General Meeting.

16. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Brennan provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status. Mr. Brennan indicated that Form 700s are due on April 3 and there is a \$100 per day fine if it is not filed on time. Ms. Doi requested a notification be sent to those members who have not filed and they be informed of the fine. Miss Kindel indicated that she will send the notice.

Ms. Vare indicated that one new termination protest was filed on March 3, 2017, in Sunnyvale Ford-Lincoln. To date, 28 new protests have been filed with a number of those being FCA Fiat/Alfa Romeo and Maserati modification cases. Ms. Vare indicated that 29 protests were filed in 2016.

Mr. Brennan also reminded the Board that the May 18, 2017, Special Meeting is now for Public and Dealer Board members due to the *Mega RV* matter. It will begin at 10:30 a.m.

Mr. Brennan also mentioned that Jackie is currently collecting annual ACP fees and expects to collect approximately \$1 million.

This was for information only and no Board action was taken since the Board did not have a quorum.

17. **APPROVAL OF THE MINUTES FROM THE JANUARY 18, 2017, GENERAL MEETING**

Ms. Doi moved to adopt the January 18, 2017, General Meeting minutes. Mr. Batarse seconded the motion. The motion carried unanimously. However, since the Board did not have a quorum this matter will be agendaized for consideration at the June 27, 2017, General Meeting.

18. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO MICHAEL J. FLANAGAN, RETIRING DEALER ATTORNEY**

Mr. Batarse moved to present a Resolution to Michael J. Flanagan, retiring dealer attorney, in recognition of his contribution to the New Motor Vehicle Board. Ms. Doi seconded the motion. The motion carried unanimously. However, since the Board did not have a quorum this matter will be agendaized for consideration at the June 27, 2017, General Meeting.

19. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented.

20. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 4:55 p.m.

Submitted by

\_\_\_\_\_  
WILLIAM G. BRENNAN  
Executive Director

APPROVED: \_\_\_\_\_  
Ramon Alvarez C.  
President  
New Motor Vehicle Board